

No. 12-16373

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: APPLICATION FOR EXEMPTION FROM ELECTRONIC PUBLIC
ACCESS FEES BY JENNIFER GOLLAN AND SHANE SHIFFLETT,

JENNIFER GOLLAN; SHANE SHIFFLETT,
Applicants-Appellants.

On Appeal from the United States District Court
for the Northern District of California
D.C. No. 3:12-mc-80113-JW
(Honorable James Ware)

**APPLICANT-APPELLANTS' MOTION
TO EXTEND TIME TO FILE OPENING BRIEF;
DECLARATIONS OF THOMAS R. BURKE, ROCHELLE L. WILCOX**

THOMAS R. BURKE (SB# 141930)
thomasburke@dwt.com
ROCHELLE L. WILCOX (SB# 197790)
rochellewilcox@dwt.com
DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street, Suite 800
San Francisco, California 94111
Telephone: (415) 276-6500
Facsimile: (415) 276-6599

JUDY ALEXANDER (SB# 116515)
jalexander@judyalexander.com
2302 Bobcat Trail
Soquel, CA 95073
Telephone: (831) 462-1692

Attorneys for Applicants-Appellants
JENNIFER GOLLAN and SHANE SHIFFLETT

MOTION FOR EXTENSION OF TIME

Applicants-Appellants Jennifer Gollan and Shane Shifflett (“Appellants”) hereby move this Court, pursuant to Federal Rule of Appellate Procedure 26(b) and Circuit Rule 31-2.2(b), for an extension of the date by which they must file their Opening Brief in this appeal, from September 20, 2012, to and including October 22, 2012. This is Appellants’ first request for an extension of time to file the Opening Brief and no additional extensions are contemplated.

In this case, the United States District Court for the Northern District of California is, technically, the Appellee. Appellants’ attorney spoke with Lynn Fuller, the Court’s Operations Analyst, on Wednesday, September 5, 2012, to determine who at the Court will speak on the Court’s behalf. Declaration of Rochelle L. Wilcox (“Wilcox Decl.”) ¶ 3. On September 12, 2012, Appellants’ counsel was advised that she should communicate with the Chief Judge’s chambers related to this matter, and left a voicemail message for the Court. Id. The Court had not yet responded when this Motion was filed. Id.

Substantial need exists for granting the extension because Appellants cannot prepare and file the Opening Brief by September 20, 2012, the current due date, as a consequence of the work load and scheduling conflicts of the attorneys who will be responsible for preparing the Opening Brief.

1. On June 13, 2012, this Court issued an order setting a briefing schedule under which the Opening Brief is due on September 20, 2012 (and no other briefs are scheduled to be filed).

2. Thomas R. Burke, a partner with Davis Wright Tremaine LLP, is the attorney of record representing Appellants in connection with this appeal. Over the last several months, Mr. Burke has worked an exhaustive schedule in cases for which he served as lead counsel and in conjunction with a book he is preparing for the Rutter Group (as discussed further below). Declaration of Thomas R. Burke (“Burke Decl.”) ¶ 3. He worked more than 300 hours in June, more than 375 hours in July, and more than 160 hours in August (in addition to taking a two-week pre-scheduled vacation that month). He has had no time to devote to the briefing in this matter. The primary matters on which he has worked over the past several months, and will work over the next month, are as follows:

- a. Since the Fall of 2011, Mr. Burke has been working on a California Practice Guide for The Rutter Group on California’s anti-SLAPP statute, Code of Civil Procedure § 425.16. Id. ¶ 4.a. Although Mr. Burke was contractually obligated to deliver the book by August 1, 2012, a deadline set months before the Court issued the briefing schedule in this case, due to other demands over the summer he was unable to meet that deadline and was required

to obtain an extension. Id. Mr. Burke is continuing to work on the book and is devoting as much time as possible every week to enable the book to be published this Fall, as contemplated by the publisher.

- b. Mr. Burke is lead counsel for The First Amendment Coalition in a Freedom of Information Act lawsuit against the Department of Justice seeking access to a legal memorandum justifying the extrajudicial killing of United States citizens abroad. Id. ¶ 4.b. Over the past month, he has been required to spend a large amount of time in connection with cross-motions for summary judgment, and currently must file the primary brief on October 5, 2012.
- c. Mr. Burke is also counsel in the matter of Hardin v. Palo Alto Medical Foundation, Inc., Alameda County Superior Court Case No. RG11600291, in which he recently filed a Special Motion to Strike, which is scheduled to be heard on October 9, 2012. Id. ¶ 4.c. Mr. Burke devoted considerable time in August to prepare the Special Motion to Strike, the filing of which was subject to a statutory deadline. Id.
- d. Mr. Burke is also lead counsel for the Respondents in City of Redding v. American Civil Liberties Union of Northern California,

California Court of Appeal, Third Appellate District, Case Nos. C068873 & C068866, in an appeal that on August 28, 2012, was set for argument on September 21, 2012, in the court of appeal. Id.

¶ 4.d. Mr. Burke will be assisting a colleague to prepare for the oral argument, which will be her first, and to be prepared to address any issues raised at argument. Id.

- e. Mr. Burke is also lead counsel for Defendants in Young v. CBS Broadcasting, Inc., California Court of Appeal, Third Appellate District, Case No. C064567, a complex libel lawsuit which the court of appeal has also recently set for argument on October 22, 2012. Id. ¶ 4.e. This matter has been pending in the appellate court for nearly two years and Mr. Burke will be devoting considerable time in September and October to prepare for this argument. Id.
- f. Mr. Burke was out of the country on a pre-planned trip to be with his family in rural Brazil from July 31, 2012, to August 16, 2012. Mr. Burke purchased non-refundable airplane tickets for this trip before this Court issued the briefing schedule. Id. ¶ 4.f. Even with this trip, he billed more than 160 hours in August. Id. ¶ 3.

3. Rochelle Wilcox, a partner with Davis Wright Tremaine LLP who is the primary attorney working with Mr. Burke in the briefing for this appeal, has been extremely busy working to prepare a large case for trial. The trial initially was scheduled for September 19, 2012, but recently was continued for four weeks, to October 17th. Because of the demands of that trial, she has not been able to spend any time preparing the Opening Brief in this matter. Wilcox Decl. ¶ 2.

Ninth Circuit Rule 31-2.2(b) provides that an extension of time may be granted “upon written motion supported by a showing of diligence and substantial need.” Counsel for APPELLANTS have exercised diligence, but given Mr. Burke’s and Ms. Wilcox’s busy schedules and pre-existing scheduling conflicts, substantial need exists for extension of the deadline to file Appellants’ Opening Brief.

In addition, counsel have not yet received the reporter’s transcript for the single hearing at issue in this matter, which was held on April 30, 2012, and they understand that the court reporter is on a medical leave of absence and therefore unable to prepare the transcript. Wilcox Decl. ¶ 4.

Accordingly, Appellants respectfully request that the Court grant an extension of time to file their Opening Brief, from September 20, 2012, to October 22, 2012. Appellants represent that the Brief will be filed within the time

requested and, assuming that Appellants timely receive the designated reporter's transcript, no further requests for extension of time are contemplated.

RESPECTFULLY SUBMITTED this 13th day of September, 2012.

LAW OFFICES OF JUDY ALEXANDER
JUDY ALEXANDER

DAVIS WRIGHT TREMAINE LLP
THOMAS R. BURKE
ROCHELLE L. WILCOX

By /s/ Thomas R. Burke

Thomas R. Burke

Attorneys for Applicants-Appellants
JENNIFER GOLLAN and SHANE SHIFFLETT

DECLARATION OF THOMAS R. BURKE

1. I am an attorney admitted to practice before the courts of the State of California and before this Court. I am a partner in the law firm of Davis Wright Tremaine LLP, and lead counsel in this matter for Applicants-Appellants JENNIFER GOLLAN and SHANE SHIFFLETT (“Appellants”). I have personal knowledge of the matters stated below. I submit this declaration pursuant to Circuit Rule 31-2.2(b) in support of Appellants’ motion for an extension of the date that its Opening Brief is due in this appeal.

2. This is Appellants’ first request for an extension of time to file their Opening Brief. Under the Time Schedule Order issued by this Court for this appeal on June 13, 2012, Appellants’ Opening Brief originally was due on September 20, 2012. Appellants request an extension of time, to and including October 22, 2012, to file their Opening Brief.

3. Over the past few months, I have worked an exhaustive schedule in cases for which I served as lead counsel, as well as in my work preparing a book for the Rutter Group, as co-chair of my firm’s media law practice and with other practice commitments. I worked more than 300 hours in June, more than 375 hours in July, and more than 160 hours in August (in addition to taking a two-week pre-scheduled vacation that month). Thus, I have had no time to devote to the briefing in this matter.

4. The primary matters on which I have worked over the past several months, and will work over the next month, are as follows:

- a. Since the Fall of 2011, on my own, I have been working on a California Practice Guide for The Rutter Group on California's anti-SLAPP statute, Code of Civil Procedure § 425.16. Although I was contractually obligated to deliver the book by August 1, 2012, a deadline set months before the Court issued the briefing schedule in this case, due to other demands over the summer I was unable to meet that deadline and was required to obtain an extension. I am continuing to work on the book and devoting as much time as possible every week to enable the book to be published this Fall, as contemplated by the publisher.
- b. I am lead counsel for The First Amendment Coalition in a Freedom of Information Act lawsuit against the Department of Justice seeking access to a legal memorandum justifying the extrajudicial killing of United States citizens abroad. Over the past month, I have been required to spend a large amount of time in connection with cross-motions for summary judgment, and currently must file the primary brief on October 5, 2012.

- c. I am also counsel in the matter of Hardin v. Palo Alto Medical Foundation, Inc., Alameda County Superior Court Case No. RG11600291, in which I recently filed a Special Motion to Strike, which is scheduled to be heard on October 9, 2012. I devoted considerable time in August to prepare the Special Motion to Strike, the filing of which was subject to a statutory deadline.
- d. I am also lead counsel for the Respondents in City of Redding v. American Civil Liberties Union of Northern California, California Court of Appeal, Third Appellate District, Case Nos. C068873 & C068866, in an appeal that on August 28, 2012, was set for argument on September 21, 2012, in the court of appeal. I will be assisting a colleague to prepare for the oral argument, which will be her first, and to be prepared to address any issues raised at argument.
- e. I am also lead counsel for Defendants in Young v. CBS Broadcasting, Inc., California Court of Appeal, Third Appellate District, Case No. C064567, a complex libel lawsuit which the court of appeal has also recently set for argument on October 22, 2012. This matter has been pending in the appellate court for

nearly two years and I will be devoting considerable time in September and October to prepare for this argument.

- f. I was out of the country on a pre-planned trip to be with my family in rural Brazil from July 31, 2012, to August 16, 2012. I purchased non-refundable airplane tickets for this trip before this Court issued the briefing schedule. Even with this trip, I billed more than 160 hours in August.

I declare under penalty of perjury under the laws of the United States of America that that this declaration was executed on the 13th day of September, 2012 at Washington, D.C., and that the foregoing is true and correct.

/s/ Thomas R. Burke
Thomas R. Burke

DECLARATION OF ROCHELLE L. WILCOX

I, Rochelle L. Wilcox, declare:

1. I am an attorney admitted to practice before the courts of the State of California and before this Court. I am a partner in the law firm of Davis Wright Tremaine LLP, and am one of the attorneys representing Applicants-Appellants JENNIFER GOLLAN and SHANE SHIFFLETT (“Appellants”) in this matter. I have personal knowledge of the matters stated below. I submit this declaration pursuant to Circuit Rule 31-2.2(b) in support of Appellants’ motion for an extension of the date that its opening brief is due in this appeal.

2. Over the past few months, my schedule has been extremely busy, largely due to my participation in a case that was, until last week, scheduled to be tried on September 19, 2012. Last week, it was rescheduled to October 17, 2012. The trial currently is expected to last several weeks, and has required an extensive amount of my time in pre-trial and discovery issues. Given these demands, I did not have available time necessary to prepare and file the Opening Brief in this case during this period.

3. I spoke with Lynn Fuller, the Operations Analyst for the Northern District of California, on Wednesday, September 5, 2012, to determine who at the Court would speak on the Court’s behalf. On September 12, 2012, Ms. Fuller advised me that we should communicate with the Chief Judge’s chambers related

to this matter. I left a voicemail message for the Court. The Court has not yet responded to my voicemail inquiry.

4. On July 6, 2012, Appellants designated a transcript from the proceedings held on April 30, 2012. On information and belief, the court reporter is on a medical leave of absence and has not yet prepared the designated transcript.

I declare under penalty of perjury under the laws of the United States of America that that this declaration was executed on 13th day of September, 2012 at Roseville, California and that the foregoing is true and correct.

/s/ Rochelle L. Wilcox

Rochelle L. Wilcox